

BEFORE THE

## Federal Communications Commission

WASHINGTON, D.C.

OCT 13 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Carriage of the Transmissions  
of Digital Television Broadcast Stations )

CS Docket No. 98-120

Amendments to Part 76  
of the Commission's Rules )**COMMENTS OF NAMED STATE BROADCASTERS ASSOCIATIONS**

The Alabama Broadcasters Association, the Arizona Broadcasters Association, the California Broadcasters Association, the Connecticut Broadcasters Association, the Florida Association of Broadcasters, the Georgia Association of Broadcasters, the Illinois Broadcasters Association, the Iowa Broadcasters Association, the Kansas Association of Broadcasters, the Louisiana Association of Broadcasters, the Maine Association of Broadcasters, the Maryland/DC/Delaware Broadcasters Association, the Massachusetts Broadcasters Association, the Minnesota Broadcasters Association, the Missouri Broadcasters Association, the Nebraska Broadcasters Association, the Nevada Broadcasters Association, the New Hampshire Association of Broadcasters, the Ohio Association of Broadcasters, the Oklahoma Association of Broadcasters, the Oregon Association of Broadcasters, the Pennsylvania Association of Broadcasters, the South Dakota Broadcasters Association, the Utah Broadcasters Association, the Washington State Association of Broadcasters and the Wisconsin Broadcasters Association (collectively, the "Associations"), by their attorney and pursuant to Section 1.405 of the Commission's Rules, hereby jointly file these comments on the Commission's Notice of Proposed

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Rulemaking in the above-referenced proceeding. The Associations in each state represent that state's commercial, and in some cases noncommercial, broadcast stations. The Commission's request for comments on the issues of the must carry rights of digital broadcast television stations is a crucial one for the television members of these associations. As set forth below, the ability to quickly achieve distribution throughout their service areas may be the only way in which many television stations will be able to pay for the conversion to digital transmissions. Thus, the Associations believe that the Commission must order that cable systems carry the full digital signal on their systems upon the request of the broadcaster.

#### Introduction

1. Each of the Associations represents the interests of free, local, over-the-air broadcasters in their respective states. As representatives of these broadcasters, the Associations are vitally interested in the survival and economic health of their members. In many cases, the Associations have been serving broadcasters for over 50 years, assisting broadcasters in their quest to better serve the public interest. Thus, the Associations have worked to educate broadcasters in their profession, through seminars and other meetings designed to facilitate the exchange of information on how stations can best reach out to their communities to provide them with the information and entertainment programming they need and desire.

2. The efforts of broadcasters have been tireless. Stations routinely cover events of local interest, often preempting more lucrative entertainment programs when weather emergencies or other important events occur within their service areas. No other electronic medium of mass communications approaches the depth and breath of coverage to *local* issues as provided by the broadcaster. Only cable television has even attempted to foray into broadcasters' domain of local

news coverage, and such attempts have been few and restricted to only the largest markets. Only in these very large television markets can cable justify the very large expense necessary for a local news operation. But in every television market, broadcasters are there to provide news, and in virtually all markets they are able to provide a choice of news products on different free, over-the-air channels, at different times of the day.

3. Yet the coming transition to digital could threaten this broadcast system which is the envy of the world.<sup>1/</sup> The cost of the transition to digital, while perhaps readily absorbed in the larger markets, will be a real financial burden to stations in the smaller markets. The cost of the digital equipment is a constant. While the large markets have commensurately larger audiences which advertisers will pay to reach, thereby giving those stations the revenue to amortize the digital transition costs, there simply is not the same audience base in the smaller markets. The smaller market simply does not provide the advertising revenue necessary to quickly pay for the digital transition costs.

4. To compound that fact, cable controls access to approximately two thirds of all television households. Thus, were cable to deny carriage of the digital signal, on which broadcasters will spend so much to produce on a timetable which has been set by the Commission, the one-third of households who are not cabled would become the chief advertising

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<sup>1/</sup> Many executive directors and members of state associations have been involved with the training of broadcasters from countries throughout the world. For example, the Executive Director of the Arizona Broadcasters Association spent time in Bulgaria training broadcasters on how to survive in a broadcast system unshackled from the constraints of government domination. Similarly, a member of the Illinois Broadcasters Association has been to Lithuania to train broadcasters there, and hosted those broadcasters in the United States who have visited and learned from United States broadcast operations. Throughout the developing world, countries are learning from and emulating the American broadcast model.

base to support the costs of this new technology. In smaller markets, where the advertising base is already small, cutting it by two thirds would make it almost non-existent. Therefore, the Associations submit that the Commission must, to ensure the success of its digital mandate and to protect the viability of our television industry, require the mandatory carriage of the digital signal.

### Discussion

5. The Notice of Proposed Rulemaking lays out a series of questions for consideration. A cursory review of the questions would suggest that the issue of cable carriage of digital television stations is a complex one capable of substantial disagreement and debate. However, the real issue is not as complex as the Commission's Notice suggests. The fundamental question is whether Congress' scheme for insuring the cable carriage of free over-the-air television, and the diversity of programming that it provides, is a sound one for the digital age. As there is no substitute for such television service, that question must be answered in the affirmative. The Commission must continue to require that cable systems carry the entire broadcast signal of a television station, both analog and digital, to conform to the intent of Congress in its passage of the Cable Act's must carry provisions.

6. The Notice suggests that such a requirement might be unduly burdensome on the cable system, as the system could potentially need to carry two signals for each station which they currently carry. In fact, that is no real burden at all, as the cable systems will still be governed by the provisions of the Cable Act providing that the system does not have to devote more than one third of its channel capacity to must carry signals. Such a restriction would still apply, thus, the cable system will be under no burden greater than that which it potentially currently faces. Moreover, any burden will be a temporary one, as the digital transition requires that stations begin

to simulcast their digital and analog signals by the year 2005, at which time only the digital signal will be subject to must-carry protection.

7. A cable system need do no more than pass through the digital signal broadcast by the station in some fashion which allows for its reception by the home viewer. Whether the signal is passed through in the exact fashion transmitted, or whether the cable system translates it into some other form as necessary to make it work with their current cable plant, is less important than the real issue -- whether the consumer can receive the full 6 MHz signal at their home receiver in a manner in which that signal can be used by that home receiver. Passing through the entire signal will also avoid the problem that the Commission would otherwise face in determining what material is not program-related and thus capable of being deleted, and in deciding how to strip out non-broadcast services from the digital signal. As Congress itself recognized, "given the dynamic nature of the [digital] data flow, these services probably cannot be separated or segmented". Communications Act of 1995, House Report on H.R. 1555, Report No. 104-204 at p.116.

8. The Commission expresses its reservations as to whether it has the authority to order the carriage of the entire 6 MHz channel in light of the language of Section 336 of the Act which provides that "no ancillary or supplemental service shall have any right to carriage under section 614 or 615". However, this provision does not prohibit the Commission from ordering that the entire 6 MHz digital channel is entitled to carriage. Instead it only prohibits the mandatory carriage of the ancillary and supplemental services standing alone. The legislative history cited above makes clear that Congress recognized that, at least when the primary broadcast signal is being transmitted, these ancillary and supplemental services will be indivisible from the main signal of the station. The House Report goes on to state that the station may

broadcast such services during hours when the primary broadcast signal is not being broadcast, particularly during the early years of the digital transition. It is such independent transmissions which are not themselves entitled to independent carriage absent the primary broadcast signal.

9. Thus, the Associations submit that the must-carry rules must be applied to their fullest extent to require the carriage of digital television signals by cable systems. Only by fully protecting the integrity of the television signal will this new service be able to grow to the fulfill the objectives envisioned by the Commission when it mandated the digital conversion. Only by requiring that the cable systems, which have a bottleneck on the access to two-thirds of American television households, carry these signals will the service be able to develop into the ubiquitous service necessary for the transition to digital to succeed. Only by requiring this carriage will the Commission assure that the system of free over-the-air television, which is the envy of the world, will continue to provide its important service to the American people. Thus, the Associations respectfully request that the Commission mandate full must-carry rights for digital television signals on local cable systems.

Conclusion

For the reasons set forth above, the Commission should order that the mandatory carriage provisions of the Cable Act apply to digital television stations.

Respectfully Submitted;

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 New Hampshire Association of Broadcasters  
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